



**INDIANA COURT OF APPEALS  
ORAL ARGUMENT AT A GLANCE  
FRANKLIN COLLEGE**

**CRIMINAL LAW**

When a person has been designated a habitual traffic violator, what are the circumstances under which he or she may be convicted of driving with a license suspended for this status?

*State of  
Indiana  
v. Karl  
D.  
Jackson*

**Appeal from:**  
Hamilton  
Superior Court

The Honorable  
J. Richard  
Campbell,  
Judge

**Oral  
Argument:**  
March 29,  
2007  
10:00 a.m. –  
10:40 a.m.  
20 minutes  
each side

**CASE SYNOPSIS**

**Facts and Procedural  
History**

In 2003, the Indiana Bureau of Motor Vehicles, or BMV, determined that Karl D. Jackson was a “**habitual traffic violator**,” or HTV. On April 14, 2003, the BMV sent a notice of this determination to Jackson at the last address Jackson had given to the BMV. Jackson testified that he never received this notice, and introduced evidence that on the date the BMV mailed the notice, he was living at a different location. Jackson never informed the BMV that his address had changed.

In 2005, a police officer stopped a vehicle driven by Jackson. Jackson told the officer that his license was suspended, but did not tell the officer he was an HTV. Driving with a suspended license is also a criminal offense, but the penalty is more severe for driving with a license that was suspended due to the determination that the driver is an HTV. The State charged Jackson with operating a

motor vehicle after being adjudged an HTV. At trial, the State introduced evidence of Jackson’s prior traffic violations, the BMV’s determination that Jackson was an HTV, and documents showing that the BMV had mailed a notice of this determination to the address Jackson had last provided to the BMV. Evidence was also introduced that the BMV stamps such notifications with an instruction not to forward, and that the BMV does not inform license holders that they are required by statute to report a change of address to the BMV. The trial court entered a judgment of acquittal, finding that the State failed to prove that Jackson operated a motor vehicle knowing that he was an HTV.

It is important to note that Jackson was acquitted at trial. Because of the prohibition of **double jeopardy**, even if this court finds for the State, Jackson cannot be convicted or re-tried based upon his act. Therefore, in regard to Jackson, the issues in this case are **moot**. This court addresses issues in these situations to provide guidance for trial courts in future cases.

*State of Indiana v. Karl D. Jackson***Case Synopsis (continued)****Parties' Arguments**

The statute under which Jackson was charged states that it is a crime for one to operate a vehicle while the person's driving privileges are suspended as an HTV "and the person knows that the person's driving privileges are suspended." The statute also provides that proof that the BMV mailed notice of this suspension to the last address shown for the person in the BMV's records establishes a **rebuttable presumption** that the person knows that the person's driving privileges are suspended. Prior to 2000, this statute contained neither the **mens rea** requirement that the person knows of the suspension nor the provision regarding the rebuttable presumption. However, Indiana courts interpreted the pre-2000 statute to require the State to prove that the defendant had either knowledge or **constructive knowledge** of the suspension. Courts further determined that proof that the BMV had mailed an HTV notice to the address last provided by the defendant to the BMV established the defendant's constructive knowledge. Another statute, **non-penal** in nature, requires those who hold a driver's license to report any change in address to the BMV. Jackson did not comply with this statute.

This case involves two principal issues: (1) whether the legislature's amendment of the driving while an HTV statute dispensed with the constructive knowledge element developed through case law and instead requires proof of actual knowledge; and (2)

*Please see page 3 for definitions of the terms highlighted in **bold**.*

whether the statute requiring licensees to keep the BMV informed of any change of address, renders those who did not so notify the BMV unable to rebut the statutory presumption of their knowledge through evidence that they did not receive the notice.

With regard to the first issue, the State argues that when the legislature amended the statute it was merely **codifying** the existing **case law**, and did not mean to dispense with the constructive knowledge element. Jackson argues that had the legislature meant to keep constructive knowledge as a part of the statute, it would have said so explicitly.

With regard to the second issue, the State argues that Jackson's failure to abide by the Indiana statute requiring drivers to notify the BMV of any change in address should render Jackson unable to rebut the presumption of his knowledge. The State further argues that to hold otherwise would reward those who fail to notify the BMV of a change in address. Jackson argues that the evidence he introduced is sufficient to support the trial court's decision that he had rebutted the presumption, and that his failure to follow the non-penal statute should have no effect on his liability under the criminal statute.

## Case Synopsis (*continued*)

### GLOSSARY

**Case Law** – Law that is established through court decisions, as opposed to law that is established through statutes.

**Codifying** – The Legislature’s act of establishing law through the enactment of a statute.

**Constructive Knowledge** – Knowledge that one should gain using reasonable care and diligence; also referred to as something one “should know.”

**Double Jeopardy** – Repeated prosecution for the same offense; double jeopardy is prohibited by the 5<sup>th</sup> Amendment to the United States Constitution.

**Habitual Traffic Violator** – Under Indiana statute, a person who has accumulated at least two convictions from a specified list of driving offenses within ten years is considered an HTV, and will have his or her license suspended for either five years, ten years, or life, depending on the number and type of underlying convictions.

**Mens Rea** – Latin for “guilty mind”; the state of mind that the prosecution must prove the defendant had when committing a crime; states of mind include “intentionally,” “knowingly,” “recklessly,” and “negligently” committing an act.

**Moot** – An appeal is said to be “moot” when the outcome of the appeal has no practical effect on the parties.

**Non-Penal** – A statute for which no criminal penalty attaches for a violation.

**Rebuttable Presumption** – A legal inference that a fact exists; the party against whom this fact is used may introduce evidence to overcome this presumption.

### Opinion in this case expected:

By summer 2007

*The Court will notify Franklin College when the opinion is handed down. Please check the Court’s website to read the opinion.*

Court of Appeals opinions are available online at <http://www.in.gov/judiciary/opinions/appeals.html>.

Locate archived opinions at <http://www.in.gov/judiciary/opinions/archapp.html>

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

**Or contact:**

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## TODAY'S PANEL OF JUDGES

### **Hon. John G. Baker (Monroe County), Presiding**

- Judge of the Court of Appeals since June 1989
- Chief Judge of the Court since March 2007

**John G. Baker** is originally from Aurora in Dearborn County and now resides in Boone County. Previously he lived in Monroe County for 35 years. Since 1989, he has served as a Judge of the Indiana Court of Appeals, representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

For 27 years Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and for three years the School of Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989. Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, the Judge has been active in Boy Scouts of America since his youth.

Judge Baker, who was retained on the Court by election in 1992 and 2002, lives in Boone County. He is married and has three adult sons.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

**Today's oral argument is the 180th case the Court of Appeals has heard "on the road" since early 2000.**

Among the sites for traveling oral arguments are law schools, colleges, high schools, and county courthouses.

## TODAY'S PANEL OF JUDGES

### **Hon. Carr L. Darden (Marion County)**

- Judge of the Court of Appeals since October 1994

**Carr L. Darden** was named to the Indiana Court of Appeals by Governor Evan Bayh in October 1994. Prior to his appointment, he served as a presiding judge in the Marion County Superior Court and the Marion County Municipal Court systems. He also served as the Chief Deputy State Public Defender.

Judge Darden received his BS degree from Indiana University School of Business in 1966 and his JD degree from Indiana University School of Law in Indianapolis in 1970. He is also a 1998 graduate of the Judicial College of Indiana and, in 2004, the Indiana Graduate Program for Judges.

He is a native of Nashville, Tennessee but has lived in Indiana most of his life; therefore, he is a proud Hoosier by choice. He and his wife recently celebrated their 50<sup>th</sup> wedding anniversary.

Judge Darden considered it an honor to serve in the United States military and received an honorable discharge from the U.S. Air Force in 1959.

In November 2004, Judge Darden received the Paul H. Buchanan, Jr. Award of Excellence by the Indianapolis Bar Foundation, and in May 2006, the Distinguished Alumni Award at the annual IU Law Alumni Association reception. He is also the recipient of two Sagamores of the Wabash, Indiana's highest distinguished citizen award.

Judge Darden is deeply involved in his church and community, serving on the boards of numerous charitable organizations. He has participated in several legal and education seminars. He is a lifetime member of the NAACP, the National Bar Association, and the American, Indiana State, and Marion County bar associations. One of the awards that he cherishes most is the recognition by his peers of being "Exceptionally Qualified" to serve as a trial court judge.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



## TODAY'S PANEL OF JUDGES

### **Hon. Margret G. Robb (Tippecanoe County)**

- Judge of the Court of Appeals since July 1998

**Margret G. Robb** was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis. Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender.

Judge Robb chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar

Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YMCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the U.S. Navy.

## **ATTORNEYS FOR THE PARTIES**

**For Appellant, State of Indiana:**  
**Christopher Americanos**  
**Deputy Attorney General**  
**Indianapolis**

**Christopher Americanos** was born and raised in Marion County. He graduated from Butler University in 2002 with a B.A in Philosophy and the Indiana University School of Law — Indianapolis in 2006. He has served as a Deputy Attorney General in the Criminal Appeals Section since January 2007.

In law school, Mr. Americanos was involved in several student organizations including the Environment Law Society, Equal Justice Works, Phi Delta Phi, and the Democratic Law Society.

He served as vice-president of the Student Bar Association during his third year. For his performance in the Moot Court Competition, he was inducted into the Order of the Barristers. He was also a member of the Indiana Health Law Review.

In the summer of 2005, Mr. Americanos served as a legal intern for Region VIII of the Environmental Protection Agency, headquartered in Denver, Colorado. The following year, he was admitted as a Finalist in the federal government's Presidential Management Fellowship Program.

## ATTORNEYS FOR THE PARTIES

**For Appellee, Karl D. Jackson:**  
**Lawrence M. Hansen**  
**Hansen Law Firm, LLC**  
**Fishers, Indiana**

Born Chicago, IL, May 11, 1963, **Lawrence M. Hansen** is the founding member of Hansen Law Firm, LLC. Mr. Hansen received his Bachelor of Science degree in Public and Environmental Affairs from Indiana University in 1985. In 1989, he received his Juris Doctor degree, Highest Distinction, from the John Marshall Law School, Chicago, Illinois. He is a two-time recipient of Outstanding Young Men of America Awards. He has also been recognized in the National Registry of Who's Who.

During his legal education, Mr. Hansen served as a staff editor to the Software Law Journal. The Journal is a Law Review publication focusing on computer technology and related legal issues. Prior to entering the practice of law, Mr. Hansen served as a local operations manager for an over-the-road interstate trucking company.

Since beginning his practice, Mr. Hansen has concentrated primarily in the area of litigation. He has successfully resolved numerous matters through effective uses of settlement discussions, alternative dispute resolutions, and trial and appellate procedure. Mr. Hansen is licensed to practice before the Indiana Supreme Court, the Indiana Court of Appeals, the United States District Court for the Northern and Southern Districts of Indiana, the United States District Court for the Northern District of Illinois (trial bar member), and the U.S. Court of Appeals for the Seventh Circuit.

Mr. Hansen also maintains membership in the following bar associations: Indianapolis, Indiana State, Defense Research Institute and the Defense Trial Counsel of Indiana. Mr. Hansen practices in the following areas: Insurance defense, personal injury, premises liability, product liability, third party liability, professional negligence, construction litigation, toxic tort litigation, employment litigation, first party defense, interstate carrier liability and criminal defense.

## AMICUS BRIEFS

*A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.*

- There are no amicus briefs in this case.